

**REMARKS**

A summary of the status of the claims in the present response is presented below.

Claims 1, 9, 14, 15, and 18 are currently amended.

Claims 2-4, 10, 11, 16, and 17 are previously presented claims.

Claims 5-8, 12, 13, 19, and 20 are originally presented claims.

Claim 19 is cancelled.

Claim 21 is new.

Claims 1-18, and 21 are thus currently pending in this Application.

**35 U.S.C. § 102(b)**

Claims 1-5, 7-10, and 14-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Jorgensen (US Patent No. 2,617,005). Applicants have amended independent Claims 1, 14, and 15. Claims 2-5, 7-10, and 16-17 are dependent claims and are ultimately dependent upon amended Claims 1, 14, and 15, respectively. Support for these amendments to these Claims are set forth in paragraph numbers 0033, 0034, 0037 and 0039 of the Applicants' specification and in specific detail in Figures 1 and 2.

Jorgensen discloses a warming device that has a tray-like base member containing a heating element "A" (see Figure 1 of Jorgensen) having a center body plate "2" (see Figure 1 of Jorgensen). The tray of Jorgensen is surrounded by side walls. At the center of the body plate of the heating element is disposed therein a single pole single throw normally open spring switch that includes an upstanding operating lever. The operating lever of the Jorgensen spring switch is engaged from above by the free end portion of an elongated spring arm. Jorgensen states that the opposite end portion of the spring arm is riveted or otherwise rigidly secured to a side wall of the tray. Jorgensen teaches that the side walls of the tray have flanges to accommodate an oversized cover. The spring arm underlies the cover and the free end of the spring arm terminates at the central portion of the cover.

In contrast to Jorgensen, Claims 1, 14, and 15, as amended, and Claims 2-5, 7-10, and 16-17, through their ultimate dependency upon amended Claims 1, 14, and 15, respectively, recites either a patient-activated temperature controlled surface, an animal bed, or a method of providing comfort to patient, that has a floor that moves in a down

and an up direction, a temperature source that is located beneath the movable floor, and an actuator element that is located beneath both the floor and the temperature source. The claims, as amended, recite that the actuator element is activated and deactivated by the presence or absence of the weight of the patient upon the movable floor, the movable floor in engagement/disengagement with the temperature source, and the temperature source in engagement/disengagement with the actuator element. Claims 1-5, 7-10, and 14-17, as amended, require that the actuator element be located beneath both the movable floor and the temperature source, and these claims positively recite that the temperature source activates/deactivates the actuator element. Support for this amendment is shown in Figures 1 and 2 and set forth in paragraphs 0024 and 0037 of the specification. This arrangement of elements is not shown in Jorgensen. The device of Jorgensen is of a totally different structure arrangement and requires an added engineering element, namely, the spring arm, in order to actuate the device and which adds to the manufacturing cost of production. Further, the spring arm of Jorgensen is not similar to the temperature source and the first support elements of the present invention. The spring arm of Jorgensen only extends from the side wall (to where it is secured) to the center of the body plate of the heating unit. The spring arm of Jorgensen does not extend across the entire horizontal length of the body plate of the heating unit, and thus does not provide a superior actuation of the spring switch. Because the spring arm of Jorgensen does not extend across the full horizontal length of the device, Jorgensen further requires that the side wall of the tray have flanges to secure a cover preferably made of metal. The cover of Jorgensen is the floor wherein an animal would rest. Jorgensen states that the cover is preferably metal since the cover must be depressed to engage the spring arm. The metal cover with flanges required by Jorgensen to accommodate the structural inadequacies of the short length of the spring arm and further adds another manufacturing expense, all of which are obviated with the structure and elements recited in the claims of the present invention.

For a claim to be anticipated by a reference under 35 U.S.C. § 102(b), the reference must teach or suggest all of the limitations of the claim. Jorgensen does not teach or suggest that the moveable floor and the temperature source both be located

above an actuator element. Jorgensen teaches that the moveable floor be above the actuator element but requires that a spring arm that has one end secured to the side wall and that has a free end that engages the operating lever of the spring switch. Jorgensen requires the spring arm to engage the upstanding operating lever of the spring switch since the spring switch is disposed in the center of the body plate of the heating unit. It will be appreciated by those persons skilled in the art that Jorgensen does not teach or suggest that the temperature source activate the operating lever of the spring switch. In contrast, the amended claims of the present invention now recite that the temperature source engages the actuator element. Jorgensen is only concerned with providing a warming device wherein the spring arm is secured to the wall of the device and wherein the warming device has one or more heating elements to contribute heat. The warming device of Jorgensen has flanged walls for securing a cover to the device. Jorgensen does not suggest all of the limitations of Claims 1-5, 7-10, and 14-17, as amended. Jorgensen does not recite a patient-activated temperature controlled surface, an animal bed, and a method of providing comfort to a patient, having an actuator element that is activated and deactivated by the presence or absence of the weight of the patient upon a movable floor, wherein the movable floor is in engagement/disengagement with a temperature source, and wherein the temperature source is in turn in engagement/disengagement with the actuator element. For these reasons, Applicants request that the rejection under 35 U.S.C. § 102(b) based upon Jorgensen be withdrawn and that Claims 1-5, 7-10, and 14-17, as amended, be allowed.

**Claim Rejection - 35 U.S.C. § 103(a)**

Claim 6 was rejected under 35 U.S.C. 103(a) for allegedly being unpatentable over Jorgensen in view of Goldston et al. (US Patent No. 5,303,485). Claim 6 has been amended through its dependency upon Claim 1 as amended. Applicants comments made hereinabove with regard to Jorgensen are equally applicable at the present juncture with regard to Claim 6. The Office Action states that Jorgensen fails to disclose the use of a specific actuator. Goldston et al. is relied upon for its disclosure of the use of a transistor in the place of a pressure sensitive switch. The Office Action states that it would have

been obvious to one of ordinary skill in the art at the time of the invention to provide a transistor as the actuator.

In contrast to the combination of Jorgensen and Goldston et al., Claim 6 as amended via its dependency upon Claim 1, as amended, recites that the temperature source is located beneath the movable floor, and an actuator element that is located beneath both the floor and the temperature source, and wherein the actuator element is activated and deactivated by the presence or absence of the weight of the patient upon the movable floor, the movable floor in engagement/disengagement with the temperature source, and the temperature source in engagement/disengagement with the actuator element. Jorgensen does not disclose that the actuator element be activated by the heating element. Jorgensen teaches away from the recitations of Claim 6 since Jorgensen requires a spring arm and a side walls with flanges and a cover preferably made of metal. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claim 6, as amended through its dependency upon Claim 1 as amended, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claim 6. Because all of the limitations of Applicants' Claim 6 are not taught or suggested by the combination of Jorgensen and Goldston et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Goldston et al. be withdrawn, and that now pending Claim 6 be reconsidered and allowed at an early date.

Claims 11, 12, 18, and 19 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jorgensen in view of Peebles et al. (US Patent No. 6,237,531). Applicants comments made above with regard to Jorgensen as applied to Claims 1 and 15, as amended, respectively, are equally applicable at the present juncture. Claim 19 is cancelled. The Office Action states that Jorgensen fails to disclose the specific structure of the animal bed including a wall and opening. Peebles et al is relied upon for its disclosure of an animal bed having a wall and an opening. The Office Action states that it would have been obvious to provide an animal bed of Jorgensen with the features of Peebles et al. Claims 11 and 12, and 18, ultimately depend from amended independent Claims 1 and 15, respectively, and include all of the limitations of amended Claim 1 and 15, respectively.

It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claims 11 and 12, and the method as recited in Claim 18, as amended through their dependency upon Claims 1 and 15, as amended, respectively, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claims 11, 12, and 18. Because all of the limitations of Applicants' Claims 11, 12, and 18 are not taught or suggested by the combination of Jorgensen and Peebles et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Peebles, et al. be withdrawn, and that now pending Claims 11, 12, and 18, be reconsidered and allowed at an early date.

Claims 13 and 20 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Jorgensen in view of Elbert et al. (US Patent No. 3,041,441). Applicants' comments made above with regard to Jorgensen as applied to Claims 1 and 15, as amended, respectively, are equally applicable at the present juncture. Claims 13 and 20, ultimately depend from amended independent Claims 1 and 15, respectively, and include all of the limitations of amended Claims 1 and 15, respectively. The Office Action states that Jorgensen discloses preset thermostats. Elbert et al. is relied upon for its disclosure of an adjustable thermostat. The Office Action states that it would have been obvious to provide an adjustable thermostat in Jorgensen to better control the heating of the animal bed. It is well settled that the mere fact that references can be combined does not make the combination obvious unless the art also teaches or suggests the desirability of the combination. This appears to be applicable in the present situation wherein any reasonable interpretation of the individual references would lead one skilled in the art away from the Applicants' invention as there is no teaching or suggestion in the references cited to teach or suggest the combination unless one employs impermissible hindsight. Further, even if it were proper to so combine the cited references, the Applicants further submit that effecting such a combination of the references as suggested by the Office Action would not result in a patient-activated temperature controlled surface as recited in Claim 13, and the method as recited in Claim 20, as these claims are amended through their dependency upon Claims 1 and 15, as amended, respectively, for the reasons stated *supra*. Such a combination would require a partial deconstruction of the references in a manner not taught or suggested by the references in order to meet the terms as recited in pending Claims 13 and 20. Because all of the limitations of Applicants' Claims 13 and 20 are not taught or suggested by the combination of Jorgensen and Elbert et al., Applicants submit that no prima facie case of obviousness exists. Applicants request that the rejection under 35 U.S.C. § 103 (a) over Jorgensen in view of Elbert, et al. be withdrawn, and that now pending Claims 13 and 20 be reconsidered and allowed at an early date.

Applicants respectfully submit that the cited references do not teach or suggest the present invention, and that the subject matter of the claimed invention would not have

been obvious to one having ordinary skill in the art. For the above reasons, Applicants courteously request that the rejections under 35 U.S.C. § 103(a) be withdrawn and that all pending claims be allowed at an early date.

### **CONCLUSION**

It is respectfully submitted that Applicants' pending Claims 1-18, 20, and 21, illustrate a patentable patient activated temperature-controlled surface, animal bed, and method of providing comfort to a patient employing the patient activated temperature-controlled surface, respectively, that are not taught or suggested by any of the art of record. Applicants respectfully submit that the remarks set forth in this paper place this Application in a condition for allowance and such action is respectfully requested at an early date.



**AUTHORIZATION**

Applicants believe that no further government fees are due for this Response and Amendment.

The Commissioner is hereby authorized to charge any necessary additional fees associated with this paper to Deposit Account No. 02-4800.

Respectfully submitted,  
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